

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 334 of 1984

with

CRIMINAL APPEAL NO. 355 OF 1984

with

CRIMINAL APPEAL NO. 369 OF 1984

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SURESHKUMAR HIRALAL SOLANKI & ors

Versus

STATE OF GUJARAT

Appearance:

CRIMINAL APPEAL NO. 334/84

MR NITIN M. AMIN for the appellants

CRIMINAL APPEAL NO. 335/84

MR PR ABICHANDANI for MR VIVEK BAROT for the appellants.

CRIMINAL APPEAL NO. 369/84

MR TIRMIZI for MR PM THAKKAR for the appellant

MR ST MEHTA, ADDL.PUBLIC PROSECUTOR for Respondent -State
in all three matters.

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 07/08/97

COMMON ORAL JUDGEMENT

The incident leading to the registration of Sessions Case No.90 of 1983 occurred on 16.8.1982 at about 10.00 p.m. The complainant Mahendrabhai PW-10 was at the relevant time residing in Maninagar area and he was under the threat of vacating the premises because, some people were interested in buying the same. He was, therefore, under constant pressure as people kept on visiting him for almost a year and finally, on 1st August 1982, serious incident occurred with regard to said premises, but nothing untoward has taken place.

The said occurrence of 16.8.1982 had prompted the complainant to approach the Gayakwad Haveli Police Station where he gave an application addressed to the City Police Commissioner informing him of the harassment and naturally making a request for being protected.

On the date of the incident, i.e. 16.8.1982 at about 10.00 p.m., someone knocked the door of the complainant where he was told that the police party had come in connection with his application given to the Gayakwad Haveli Police Station and this created confidence in the mind of the complainant that police is taking some action. However, he was made to come out under a pretext that he was to be taken to the said police Station for being questioned. Relying on it, he was made to sit in an Ambassador Car of green colour. In it, the two Police Constables in uniform armed with rifles and two persons in plain clothes were sitting.

Being a citizen of Ahmedabad, the complainant was quite familiar with the roads leading to Gayakwad Haveli Police Station and when he realised that the vehicle is not proceeding in the right direction, he inquired from the Driver and other occupants of the car. He was assured that they are going towards the residence of the persons who are threatening the complainant off and on and finally, the car went towards the place known as Khokhra-Mehmedabad and came to an halt all of a sudden.

The complainant was made to come out of the Car and he was taken to a nearby bungalow. It was night time and due to rains it was pitch dark. He could barely make the outline of the bungalow and he was brought into it. The person posing himself as Mr.Jhala started conversing with the complainant and made him to see two persons who were already there and the complainant was asked whether

those were the persons who were harassing him. When he did not confirm as to they being the persons, he was made to sit inside and virtually the whole night under the pretext that the persons harassing are being brought so that the complainant can identify them and matter can be proceeded further.

In the meantime, at about 12 midnight, the wife of the complainant and his young daughter were also brought and naturally, the complainant was very much terrified. Eventually, the next day evening, they were allowed to go, but before that, they were made to sign some papers which are at page nos.45 to 46. During this period of torture, the wife of the complainant Smt. Raginiben developed chest pain and it was suspected to be a heart problem and inspite of repeated requests, no medical assistance was given to her and finally before they were sent, one Doctor Gunvantbhai Parekh examined her. The complainant understandably very much terrified and did not file the complaint immediately and firstly, went to his religious Guru Pramukhswami and took his guidance and then talked to some of his friends and finally he landed up in the Police Station and lodged the complaint.

The police swung into action immediately and in very short period of time, one after the other accused were apprehended and two different identification parades were held. Accused came to be identified and after the investigation concluded and they came to be tried before the trial Court in the Sessions Case.

The ld. City Sessions Judge framed the charge as per Exh.8 and indicated that, offences under Sections 364, 385, 506(2) read with Section 120-B and even Section 34 and Section 109 both in the alternative were pressed into service. At the end of the trial, by judgment dated 30th March 1984, the ld. Addl. City Sessions Judge was pleased to acquit three out of the eight accused, i.e. original accused nos.2, 4 and 5. The present appeals are filed by the remaining five accused. Appeal No.334 of 1984 is filed by accused nos.7 and 8; Appeal No.355 of 1984 is filed by accused nos.1 and 3, and Appeal No.369 of 1984 is filed by accused no.6. Ld.Advocates Mr. N.M. Amin, Mr.P.R.Abichandani for Mr.Vivek Barot and Mr.Tirmizi for Mr.Thakkar appear on behalf of the appellants respectively. The ld. Advocates strongly urged that, though the ld. trial Judge has given a very detailed judgment and has referred to all the material placed before him more than once in course of the judgment so far as the material part of the evidence is

concerned, unfortunately, he has failed to give due importance and, therefore, the wrong order of conviction has been passed without any basis.

Ld. Advocates have reasons to make this submission because, in the background of the brief discussion as to the incident in the beginning of the incident, two very important witnesses who for our purpose would be, eye witnesses have not supported the case of the prosecution in material particulars. Complainant Mahendrabhai PW-10 Exh.43, page 292 has been declared hostile to the prosecution as recorded at page nos.306 and 307. So far as the accused are concerned, he does not identify any of them before the Court while he is in the witness box.

Raginiben PW-12 Exh.49, page 340 has also behaved in the same way and as per page 349, she too has been declared hostile to the prosecution. This witness also is unable to identify any one before the Court.

So far as the case of the prosecution relating to the said incident of 16.8.1982 is concerned, it is definitely established by the eloquent testimony of these two witnesses as well as the panchnamas drawn through two panch witnesses, investigation particulars through seven police witnesses, test identification held through two Executive Magistrates and the immediate corroboration sought to be brought through the brother of the complainant who has been examined, one can definitely say that the ld.Public Prosecutor with considerable efficiency, has brought whatever that could be brought on record by way of circumstances relating to the incident.

Nonetheless, the vital material for bringing the charge home to the accused as to they being identified and looking to the aforesaid incident of the night of 16.8.1982, the important link is missing.

Even if, therefore, it could be said that there is suspicion against the accused-appellants, it remains that only. The suspicion cannot take place of the proof. The proof could have come from the testimony of complainant Mahendrabhai and his wife Raginiben. In absence of material particulars as to identifying the accused to be tormenters on the said harrowing night, they did not utter a word and that is why the ld. Public Prosecutor in the trial Court has chosen to take permission of the Court to cross-examine them. Though they are the very prosecution witnesses, the result is that the prosecution fails.

Once the identity of the accused is not established, obviously, the order of conviction passed by the trial Court in the aforesaid consequences cannot be sustained. The appeals are, therefore, allowed. The order of conviction and sentence is hereby set aside. The sentence was of two years RI in connection with each of the offence and fine was imposed of Rs.500/- in connection with each of them. The conviction having been set aside, the order of sentence of this kind cannot survive and, therefore, fine if paid, it is ordered to be refunded to them. Bail bonds shall stand cancelled.

sreeram.